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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

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CYNTHIA STELLA, and the ESTATE OF  
HEATHER MILLER,  
  
Plaintiffs,

v.

DAVIS COUNTY, SHERIFF TODD  
RICHARDSON, MAVIN ANDERSON,  
JAMES ONDRICEK,  
  
Defendants.

**PLAINTIFFS' MOTION IN LIMINE TO  
EXCLUDE: COMPARISONS OF  
CONSTITUTIONAL CLAIMS WITH  
NEGLIGENCE AND MEDICAL  
MALPRACTICE CLAIMS**

Case No: 1:18-cv-002

Judge: Jill Parrish

Plaintiffs, by and through counsel of record, hereby submits this motion to exclude any arguments comparing the relative standards of constitutional violations with negligence or medical malpractice claims. Plaintiffs have only alleged constitutional claims in this matter, and

the comparisons between the present case and medical malpractice or negligence claims will lead to confusion.

### **INTRODUCTION**

Plaintiffs have alleged two claims against the Defendants: (1) violation of the right to medical care guaranteed by the Fourteenth Amendment to the United States Constitution; and (2) violation of the protection to be free from “unnecessary rigor” provided by the State Constitution. Plaintiffs do not, and have not, alleged negligence or medical malpractice claims in this case.

Still, Defendants intend to discuss negligence and medical malpractice and compare the two to the deliberate indifference/flagrant violation standards for constitutional violations. The argument is likely to confuse a jury and should be excluded.

### **ARGUMENT**

#### **I. Discussing negligence and medical malpractice, claims not presented in this case, is likely to confuse the jury as to the appropriate standard.**

Both the federal and state constitutional claims require a showing that the violation was in some form intentional and not mistaken. For the Fourteenth Amendment, the proper standard is deliberate indifference. For the state constitutional claims, Plaintiffs must instead prove a flagrant violation.

Defendants intend to raise the relevant standards for negligence and medical malpractice to illustrate the heightened burden required for both deliberate indifference and flagrant violation. However, these arguments are only likely to confuse a jury. Deliberate indifference, while more than just mere negligence, is its own well rounded and defined standard. There is no need to teach the jury, who are likely unfamiliar, the standard for negligence and the standard for

medical malpractice for the sole purpose of then clarifying deliberate indifference/flagrant violation is more than both of these two standards. Defendants' proposed arguments are only likely to confuse a jury as to the different standards applicable. The likelihood for confusion, coupled with its limited probative value, justifies excluding any comparisons between the present constitutional claims and any claims not present before the jury.

### **MEET AND CONFER**

The parties met and conferred through emails between December 20 and December 28<sup>th</sup>. The parties were able to reach an agreement on some topics but not to the present dispute.

### **CONCLUSION**

Plaintiffs request the Court bar any comparisons between the constitutional claims and their standards with other claims which will not be presented to the jury.

DATED this 28<sup>th</sup> day of December, 2021.

BACZYNSKI LAW, PLLC

/s/ Daniel Baczynski

Counsel for Plaintiffs

**CERTIFICATE OF SERVICE**

I certify that on this 28<sup>th</sup> day of December, 2021, I caused **PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE: COMPARISONS OF CONSTITUTIONAL CLAIMS WITH NEGLIGENCE AND MEDICAL MALPRACTICE CLAIMS** to be filed with the Court through its ECF filing system, with service provided to the following:

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